



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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7767-10 7771

मिनिस्टर ऑफ फाइनेंस

फाइल संख्या : File No : V2(ST)136&137/Ahd-South/2018-19  
Stay Appl.No. /2018-19

अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-102-2018-19

दिनांक Date : 30-11-2018 जारी करने की तारीख Date of Issue 10/11/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

Arising out of Order-in-Original No. AHM-SVTAX-000-JC-033&034-15-16 दिनांक: 09.03.2016 ,  
issued by Joint Commissioner, & CGST/WS07/O&A-07/PV/AC/17-18 दिनांक: 27.04.2018 issued  
by Asst Commissioner Div-VII Ahd south, Central Tax, Ahmedabad-South

अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Akar Info Media Pvt .Ltd  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को  
अपील या पुनरीक्षण आदेश पर तुरंत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as  
the case may be against such order, to the appropriate authority in the following way :

सरकार का पुनरीक्षण आवेदन

Revision application to Government of India :

(a) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक  
के अंतर्गत पुनरीक्षण आवेदन अर्थात् शक्ति, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली  
को भेजा जाना चाहिए।

(b) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New  
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first  
proviso to sub section (1) of Section-35 ibid :

(i) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे  
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के  
दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to  
another factory or from one warehouse to another during the course of processing of the goods in a  
warehouse or in storage whether in a factory or in a warehouse.

(iii) In case of rebate of duty of excise on goods exported to any country or territory outside India of  
an excisable material used in the manufacture of the goods which are exported to any country  
or territory outside India.

(iv) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



(a) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(c) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल में।

(d) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

कोई उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसा आदेश जो इस माल पर नियम के प्राविक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.) 1998 धारा 109 द्वारा किया जाए।

(e) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(f) केंद्रीय उत्पादन शुल्क (अपील) नियमानुली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रथम श्रेणी इ. 8 में दो पहला म उत्पादन के प्रति आदेश पेश दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश को दो-दो प्रतियों के साथ प्रेषित किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फीस भुगतान के साथ धारा-6 मालान की प्रति भी होगी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-IE of CEA, 1944, under Major Head of Account.

(g) भिन्न आवदन के साथ जहाँ राशमन रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- फीस भुगतान की जाए। यदि रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

आपल टू कस्टम, एक्साइज, एंड सर्विस टैक्स अपिलेट ट्रिबुनल के प्रति अपील-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(h) केंद्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(i) अनिर्दिष्ट परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपील के मामल में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण (रिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कंपाउण्ड, मेघानी नगर, अहमदाबाद-380016

(ii) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016, in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त रूप में किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथार्थिती अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

यदि मूल आदेशों का समावेश 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश शामिल निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क लगा जाना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall, a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

यदि अपील/अनुसूचित मामलों का नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, न्यायालय शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

यदि मूल केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) 11 D के तहत निर्धारित राशि;
- (ii) लिंगा गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

यदि पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

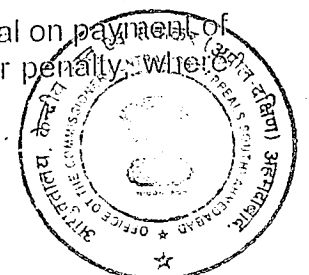
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

यदि मूल के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के अतिरिक्त पूर्व जमा जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of amount of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

Two appeals have been filed by M/s. Akar Info Media Private Limited, 50/B, Narnarayan Nagar Society, Paldi, Ahmedabad [for short - 'appellant'], the details of which are as follows:

Sr. No.	OIO No. and date	OIO passed by [for short - 'adjudicating authority']	Appeal No.
1	AHM-SVTAX-000-JC-033 & 034-15-16 dated 9.3.2016	Joint Commissioner, Service Tax Commissionerate, Ahmedabad	V2(ST)136/Ahd-South/ 18-19
2	CGST/WS07/O&A-07/PV/AC/2017-18 dated 27.4.2018	Assistant Commissioner, Division VII, Ahmedabad South	V2(ST)137/Ahd-South/ 18-19

2. Briefly, the facts are that during the course of internal audit it was observed that the appellant was not discharging service tax on the income shown under the head 'publishing income' in the Balance Sheet. Show cause notices dated 4.9.2014, 25.3.2015 and 6.1.2017, were issued demanding service tax for the period from July 2012 to March 2016. The show cause notices demanded service tax along with interest and further proposed penalty on the appellant under sections 76 and 77 of the Finance Act, 1994.

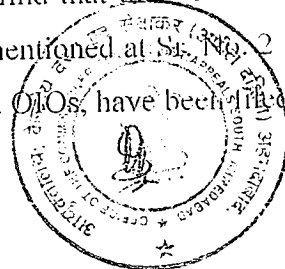
3. These notices were decided by the adjudicating authority, vide the impugned OIOs mentioned in para 1, *supra*. The demand for the period from 1.7.2012 to 30.9.2014, was dropped while the demand, for the rest of the period was confirmed, along with interest. Penalty, was also imposed on the appellant.

4. Feeling aggrieved, the appellant has filed this appeal on the below mentioned grounds:

- that it was the obligation on the department to prove that the publications were covered within taxable category; that the department made no efforts either in the notice or in the impugned OIO to discharge its burden;
- that the publications made by the appellant are newspaper; that newspaper is defined in section 1(1) of the Press and Registration of Books Act, 1867, to mean printed periodical work containing public news or comments on public news; that the present case all the ingredients of the said definition are fulfilled; that the certificate issued by the Registrar of News paper is a conclusive evidence of a periodical being a newspaper;
- that in alternative the publication of the appellant is also in the nature of a book and therefore outside the scope of taxable category; that the impugned publications are book in its ordinary meaning as well as within the meaning of definition given under both the Act;
- the adjudicating authority was first required to clarify whether the publication is a business directory, yellow pages or trade catalogue;
- that the appellant has been holding license for concessional posting issued by the postal department; that such license is provided only to monthly publications;
- that their publication is not a yellow page; that their publication is neither a trade catalogue;
- that since tax is not payable no penalty can be imposed under section 76;
- that penalty cannot be imposed under section 77 as penalty is imposed under other sections.

5. Personal hearing in the matter in respect of both the appeals was held on 19.11.2018, wherein Shri Rishit Bagadiya, CA, appeared on behalf of the appellant. He reiterated the grounds of appeal and also informed that the earlier OIA was against them.

6. Before I go into the merits of the matter, I find that the OIO mentioned at Sr. No. 1 was received by the appellant on 9.3.2016 while the OIO mentioned at Sr. No. 2 was received by the appellant on 25.5.2018. Appeals against both the impugned OIOs, have been filed on 6.11.2018.



7. I find that the aforementioned appeal have been filed beyond the stipulated period of two months, the time limit specified under section 85(3A) of the Finance Act, 1994. Relevant extracts of Section 85 of Finance Act, 1994, is reproduced below for ease of reference:

*SECTION 85. Appeals to the [Commissioner] of Central Excise (Appeals). —*

*[(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the <sup>S</sup>[Principal Commissioner of Central Excise or Commissioner of Central Excise] may appeal to the Commissioner of Central Excise (Appeals).]*

*(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.*

*(3) .....*

*[(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :*

*Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]*

8. I find that the aforementioned appeal has been filed beyond the prescribed time limit of two months. Further, even the delay in filing said appeals is more than one month after the prescribed time limit of two months. As such I am not empowered to condone the delay in this appeal, as it was filed after three months from the date of communication of the impugned order. In view of the foregoing, I reject the appeal on limitation as provided under Section 85 of the Finance Act, 1994.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
-9. The appeal filed by the appellant stands disposed of in above terms.

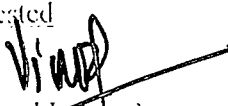
उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date 30.11.2018

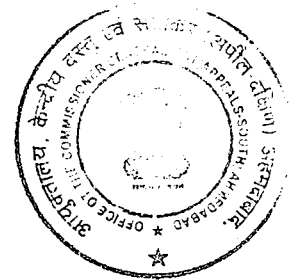
Attested

  
(Vinod Lakose)  
Superintendent (Appeal),  
Central Tax,  
Ahmedabad.

By RPAD.

To,

M/s. Akar Info Media Private Limited,  
50/B, Narnarayan Nagar Society,  
Paldi,  
Ahmedabad.



Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Assistant Commissioner, Central Tax Division-VII, Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. ~~Guard File.~~
6. P.A.